c.f. 1001 (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No. 1999 /2004

PETITIONER : Mohd. Khan,
S/o Saheb Khan,
Aged about 50 years,
R/o Juna Bilaspur, Tahsil
and District- Bilaspur (C.G.).

-Versus –

RESPONDENTS : 1. Intejamia Committee,
Masjid, Juna Bilaspur,
Through its Secretary,
Bilaspur (C.G.).

2. Salim Ishaqe,
S/o Late Jaan Mohd. Ishaqe,
R/o In front of Bihari Cinema,
Tahsil and District-Bilaspur (C.G.).

P. R. No. 20/12/04
Presented by Shri S. P. Sahu
dated 18-7-04

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDER OR DIRECTION TO DO JUSTICE IN THE MATTER.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(38)

आदेश पत्रक

मामला क्रमांक WP 1999/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	25-8-2004 Shri Rajeev Shrivastava, counsel for the petitioner. The petitioner has preferred this writ petition under Article 227 of the Constitution of India being aggrieved by the order dated 15-1-2004 passed in Civil Suit No.34-A/2001 by the 9th Civil Judge, Class-II, Bilaspur, whereby the learned Civil Judge while deciding the issue No.11 framed on the objection of the defendants, directed the petitioner to pay Court Fee on the amount claimed from 1-7-1993 till the possession is delivered at the rate of Rs.5,000/- per month as per the provisions contained in Section 7(i) of the Court Fees Act, 1870. Brief facts leading to filing of this petition are that the petitioner herein filed a suit against Intejamia Committee & others in the Court of 3rd Civil Judge, Class-II, Bilaspur, for specific performance of the agreement. During the pendency of that suit, the petitioner moved an application under Order 6 Rule 17 of the C.P.C. for amendment of the plaint in which as per para-3 he sought amendment to the effect that the defendants are disobeying the order of temporary injunction and thereby they are causing loss to the petitioner. Since they have not constructed the shop, a decree w.e.f. 1-7-1993 till the possession is delivered @ Rs.5,000/- per month as damages be awarded against the defendants jointly and severally, against which the defendants raised objections and issue NO.11 was framed. From the perusal of the order it appears that after recording the evidence, learned Civil Judge passed the impugned order and directed the petitioner to pay the Court Fee on the said ascertained amount.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...WP/999/2004... सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard learned counsel for the petitioner on admission.

Learned counsel for the petitioner submitted that the plaintiff has asked for the consequential relief, therefore, the trial Court was not correct in deciding the issue against the plaintiff and directing the plaintiff to pay Court Fee as per the provisions of Section 7 (i) of the Court Fees Act, 1870. As per the provisions of Section 7(i) of the Court Fees Act, 1870 the petitioner cannot be asked for payment of the Court Fees. Relevant section 7 of the Court Fees Act, 1870 envisages that "the amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(i) For money: In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically): According to the amount claimed;

In this case the petitioner asked for the amendment for the damages w.e.f. 1-7-93 till the possession is delivered @ Rs.5,000/- per month. Therefore, it is covered under the heading "Suit for damages". It is not a consequential relief, but the petitioner has asked for the damages, as the respondents are not complying with the temporary injunction granted by the Court, therefore, he is entitled for Rs.5,000/- per month as damages. Therefore, a decree at the rate of Rs.5,000/- per month from 1-7-93 till the delivery of possession be passed.

[पीछे देखिये

XI-HC-22

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 1999 / 2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —B—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In order to exercise the jurisdiction under Article 227 of the Constitution of India, as has been held by the Hon'ble Apex Court in the matter of **Surya Dev Rai V. Ram Chander Rai and others** reported in **(2003) 6 SCC 675** that:

> "The High Court to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging into a long drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. The supervisory jurisdiction cannot be exercised as a Court of appeal."

Therefore, the order passed by the trial Court is not illegal or incorrect in any way. The petition is liable to be dismissed and the same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Barve

[पीछे देखिये